

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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MELISSA OSTRANDER,
PLAINTIFF

v.

HUSSMAN CORPORATION,
DEFENDANT

CIVIL ACTION NO. 04-30197-MAP

JOINT MOTION TO APPROVE SETTLEMENT
[Mass. G.L. c. 152, §15]

Now come the parties jointly, with the consent of the plaintiff's workers' compensation insurer and plaintiff's employer, and move the court to approve the settlement achieved between the parties on November 2, 2006. In support of this motion, the parties state as follows:

1. The plaintiff was an 18 year old woman who was working at the Pleasant Street Market in Westfield on April 28, 2002. She had worked there for approximately one year. Her job duties included, filling orders for fresh ground hamburger. She would take strips of meat and feed them through a meat grinder. She was injured when her left hand went down the feed hole, which resulted in the amputation of four fingers and her thumb.

2. The meat grinder had Hussmann labels on it and was likely manufactured in the 1947-49 time frame. Hussmann discontinued its meat grinder line in approximately 1951. The meat grinder involved in plaintiff's accident had been in the possession of the plaintiff's employer since 1956. The meat grinder was in accordance with contemporary design standards and UL73, with a 2-1/2 inch feed hole and a 4-1/2 inch feed throat. No manufacturer put guards on grinders of this type until 1961.

3. The workers' compensation insurer, Mass. Retail Merchants Insurance Co., paid weekly wage benefits of \$151.00 per week for approximately nine months. The insurer also paid medical benefits for her initial emergency treatment, revision surgery and occupational therapy. She also treated at Shriners' Hospital for Children and was fitted for prosthetics. She had psychological counseling beginning about six months post-accident and which continued for an extended period. In total the plaintiff received \$112,498.62 in workers' compensation benefits, including \$39,837.26 in Sec. 36 benefits (loss of function/disfigurement). Mass. Retail Merchants Insurance Co. has a statutory lien to be repaid out of any third party recovery. The plaintiff has resumed part time employment at a local supermarket.

4. The plaintiff brought claims against the defendant for breach of warranty and negligence on defective design and lack of warning theories. The court denied the defendant's motion to limit the warnings-based claims. The plaintiff also asserted claims at the Department of Industrial Accidents against her workers' compensation insurer and her employer seeking benefits under G.L. c. 152, §28 (double benefits for serious and willful misconduct on the part of the employer) and §51 (young worker provision allowing for increase in calculation of her average weekly wage).

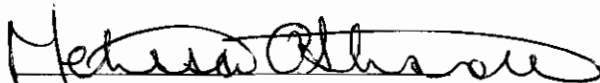
5. Following the full course of discovery and a 4-1/2 hour mediation with USMJ Timothy Hillman, attended by the parties, the employer's counsel and the workers' compensation insurer, a global resolution of the all claims was achieved. The settlement provides as follows:

- a. Hussmann will pay Ms. Ostrander \$125,000.00, subject to court approval, in satisfaction of all claims;
- b. The workers compensation insurer and Ms. Ostrander will settle the workers compensation case pursuant to MGL c. 152 Section 48 in the amount of \$50,000.00,

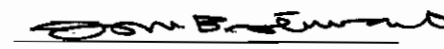
terminate her rights in this third party action, and she agreed to the settlement. Plaintiff, Melissa Ostrander, was accompanied by her parents at the Mediation.

WHEREFORE, the parties respectfully request the court approve the settlement as outlined above and enter an order of judgment approving the settlement.

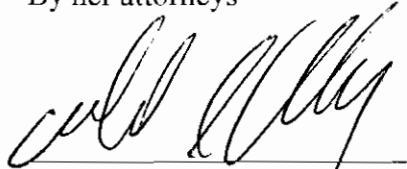
THE PLAINTIFF,
MELISSA OSTRANDER


Melissa Ostrander

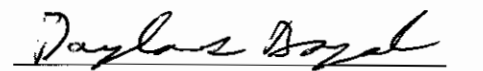
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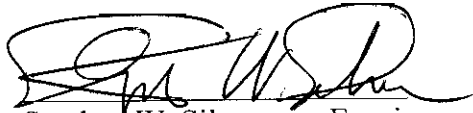
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A handwritten signature in black ink, appearing to read 'Stephen W. Silverman', written over a horizontal line.

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